



## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Carol A. Spiegel  
Telephone: (703) 308-9797  
Facsimile: (703) 305-0942

MAILED

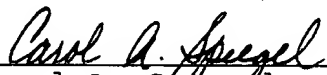
MAR 08 2002

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Applicants: Imler et al.  
Application No.: 09/218,143  
Filed: 12/22/98  
For: Defective Adenoviruses and  
Corresponding Complementation Lines

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 104,820.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

  
\_\_\_\_\_  
Carol A. Spiegel  
Administrative Patent Judge

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

Paper 1

Filed by: Carol A. Spiegel  
Administrative Patent Judge  
Box Interference  
Washington, D.C. 20231  
Tel: 703-308-9797  
Fax: 703-305-0942

Filed: March 6, 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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IZUMU SAITO, YUMI KANEGAE  
and MICHIO NAKAI

Junior Party,  
Patent 5,700,470

v.

JEAN-LUC IMLER, MAJID MEHTALI  
and ANDREA PAVIRANI

Senior Party  
Application 09/218,143

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Patent Interference No. 104,820 (CAS)

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**NOTICE DECLARING INTERFERENCE**  
(37 CFR § 1.611)

**MAILED**

**MAR 08 2002**

**PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.

Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

**Part B. Judge designated to handle the interference**

Administrative Patent Judge Carol A. Spiegel has been designated to handle the interference. 37 CFR § 1.610(a).

**Part C. Standing order**

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

**Part D. Conference call to set dates**

A telephone conference call to set dates for taking action in the interference is scheduled for **2:00 p.m. on May 9, 2002** (the call will be initiated from the PTO).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See § 17 of the STANDING ORDER.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE.

Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some mutual agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

**Part E. The parties involved in this interference are:**

Junior Party

Named inventors: IZUMU SAITO,  
YUMI KANEGAE and  
MICHIO NAKAI

Patent: U.S. Patent 5,700,470,  
issued December 23, 1997,  
based on application 08/615,048,  
filed March 12, 1996

Title: Recombinant Adenovirus with Removed E2A Gene and  
Method of Preparation

Assignee: SUMITOMO PHARMACEUTICALS COMPANY, LIMITED

Accorded Benefit: of JP application 07-276335,  
filed September 29, 1995

of JP application 07-084891,  
filed March 15, 1995

Attorneys: See last page

Address: See last page

Senior Party

Named Inventors: JEAN-LUC IMLER,  
MAJID MEHTALI and  
ANDREA PAVIRANI

Application: 09/218,143  
filed December 22, 1998

Title: Defective Adenoviruses and Corresponding  
Complementation Lines

Assignee: TRANSGENE S.A.

Accorded Benefit: of application 08/379,452,  
filed January 26, 1995  
  
of PCT application PCT/FR94/00624,  
filed May 27, 1994  
  
of FR application 93 06482,  
filed May 28, 1993

Attorneys: See last page

Address: See last page

**Part F. Count and claims of the parties**

Count 1

The recombinant adenovirus of claim 1 of the '470 Saito patent.

or

The recombinant adenovirus of claim 56 of the '143 Imler application.

or

The recombinant adenoviral vector of claim 62 of the '143 Imler application.

The claims of the parties are:

Saito:	1-31
Imler:	56-57, 59, 61-65

The claims of the parties which correspond to Count 1 are:

Saito:	1-6
Imler:	56-57, 59, 61-65

The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference, are:

Saito:	7-31
Imler:	NONE

**Part G. Heading to be used on papers**

The following heading shall be used on papers filed in the interference. See  
§ 18 of the STANDING ORDER.

Paper \_\_\_\_<sup>1</sup>

Filed on behalf of [name of party]

By: Name of lead counsel, Esq.  
Name of backup counsel, Esq.  
Street address  
City, State, and Zip-Code  
Tel:  
Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

IZUMU SAITO, YUMI KANEGAE  
and MICHIO NAKAI

Junior Party,  
U.S. Patent 5,700,470

v.

JEAN-LUC IMLER, MAJID MEHTALI  
and ANDREA PAVIRANI

Senior Party  
Application 09/218,143

Patent Interference No. 104,820 (CAS)

TITLE OF PAPER

<sup>1</sup> Leave a blank line because the board assigns the paper number.

**Part H. Summary of dates for taking action**

Times for taking action are set out in the following sections of the STANDING ORDER:

1.     **§ 7:**         date for identifying lead and backup counsel.
2.     **§ 8:**         date for identifying any real party in interest.
3.     **§ 9:**         date for requesting copies of involved and benefit applications and patents.
4.     **§ 17:**        date for filing list of proposed preliminary motions.
5.     **§ 19:**        date for accomplishing certain discovery.
6.     **§ 20:**        date for filing clean copy of claims.
7.     **§ 21:**        date for filing clean copy of claims in cases with drawings and/or claims containing a means plus function limitation.
8.     **§ 23:**        dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
9.     **§ 33:**        date for objecting to admissibility of evidence.
10.    **§ 34:**        date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
11.    **§ 35:**        dates when cross-examination can take place.
12.    **§ 45:**        dates for taking action with respect to settlement discussions



**Part I. Order form for requesting file copies**

**FILE COPY REQUEST**

Interference 104,820 (CAS)

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

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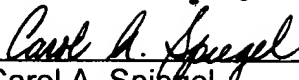
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Telephone, including area code: \_\_\_\_\_

**Part J. Signature of administrative patent judge**

  
\_\_\_\_\_  
Carol A. Spiegel  
Administrative Patent Judge

Date: March 6, 2002  
Arlington, VA

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in the preliminary motion phase of the interference (ORDERPM6)

Copy of order used for setting times for taking action in the testimony and briefing phases of the interference (ORDERTE6)

Copy U.S. Patent 5,700,470

Copy of claims of 09/218,413

DECLARE.007  
Revised September, 2000  
(replaces DECLARE.006.1)

Interference No. 104,820  
Saito v. Imler

Paper 1  
Page 10

cc (via Federal Express):

Attorney for Saito  
(real party in interest  
SUMITOMO PHARMACEUTICALS COMPANY):

SUGHRUE, MION, ZINN, MACPEAK & SEAS  
2100 Pennsylvania Avenue, NW  
Washington, DC 20037

Attorney for Imler  
(real party in interest  
TRANSGENE S.A.):

BURNS DOANE SWECKER & MATHIS LLP  
P.O. Box 1404  
Alexandria, VA 22313-1404

## INTERFERENCE DIGEST

Interference No. 104,820

Paper No. 27

Name: Jean-Luc Imler et al.

Serial No.: 09/218,143

Patent No.

Title: Defective Adenoviruses and corresponding complementation lines

Filed: 12/22/98

Interference with Saito et al.

### DECISION ON MOTIONS

Administrative Patent Judge, \_\_\_\_\_ Dated, \_\_\_\_\_

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### FINAL DECISION

Board of Patent Appeals and Interferences, favorable Dated, 5-2-02

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Court, \_\_\_\_\_ Dated, \_\_\_\_\_

### REMARKS

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This should be placed in each application or patent involved in interference in addition to the interference letters.